IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4708 OF 2006

Shri Shaikh Muzamil Husen Allabaksha ..Petitioner

Vs.

1. Shri Mayalari Kallappa Gawade and ors. ..Respondents

Mr. I.M. Khairdi for petitioner.
Mr. Sachin Dhakephalkar for respondent no.1.
Mr. A.H. Palekar, AGP for respondent nos.2 to 4.

CORAM: B.H. MARLAPALLE, J.

Date of Reserve : August 4, 2006.

Date of Pronouncement: August 10, 2006.

P.C.:

1. This petition impugns a decision of the Additional Collector of Solapur passed in the Village Panchayat Dispute No.30 of 2005 dated 13/2/2006 and confirmed by the Divisional Commissioner, Pune Division, Pune by dismissing Appeal No. 11 of 2006 on 21/6/2006.

2. The petitioner belongs to the OBC category but in the elections held to the Village Panchayat in June

2005 he was elected as a member from Ward No.3 and against a seat which was not reserved, whereas the respondent no.1 came to be elected against a seat reserved for OBC. On 31/8/2005 both the petitioner as well as the respondent no.1 submitted nomination forms to contest the election for the post of Sarpanch but the respondent no.1 withdrew his nomination and, therefore, the petitioner came to be elected as Sarpanch. Smt. Sarsabai Guranna Mote was elected as Sarpanch. The respondent no.1 filed Election Petition No.30 of 2005 and the same was allowed by the Additional Collector on 13/2/2006 and confirmed by the Divisional Commissioner on 21/6/2006 as noted earlier.

3. The petitioner's election was challenged by the respondent no.1 on the following two grounds:-

(a) Notice for holding the election for the post of Sarpanch/Upa-sarpanch was not issued three full days prior to the date of holding the meeting for electing the said post; and

(b) The post of Sarpanch was reserved for OBC and the elected candidate was not elected as a

member from the seat reserved for OBC.

. The petitioner opposed the said election petition on merits as well as on the preliminary point of delay. He contended that as per the scheme of Section 33(5) of the Bombay Village Panchayat Act, 1958, the election dispute was required to be filed within a period of 15 days from the date of election and as against this the election petition was filed on or about 19/9/2005, thus beyond time by four days. On merit it was contended that when the petitioner belongs to OBC, it was not necessary that he was required to be elected as a member of the Village Panchayat from a seat reserved for OBC and even if he was elected from an open seat as a member, he was eligible to contest the election to the post of Sarpanch as he belongs to OBC and the said post was reserved for such a category.

4. On hearing the respective parties and considering the proceedings in respect of the meeting held on 31/8/2005 and the conduct of the election for the post of Sarpanch/Upa-sarpanch, the Collector noted that the election petitioner had applied for a

certified true copy of the proceedings on 1/9/2005 and the same were made available to him on 14/9/2005. The elections were held on 31/8/2005 and the election dispute was required to be filed on or before 15/9/2005. However, the election dispute filed on 19/9/2005 was within limitation as per the Additional Collector on the ground that the certified true copies were made available to the petitioner only on 14/9/2005 and in any case even if the last date for filing the dispute was taken as 15/9/2005, a delay of four days was required to be condoned. The Additional Collector further held that the election dispute was not required to be dismissed on hyper-technical ground of delay in the facts of the case before him.

5. Under Rule 4 of the Sarpanch/Ua-psarpanch Rules 1975, the Presiding Officer is required to issue notice for a special meeting to hold the election for the post of Sarpanch/Upasarpanch prior to three clear days and in the instant case notice issued by the Presiding Officer to hold the meeting on 31/8/2005 did not have any date. Even in the proceeding recorded on 31/8/2005 it was not mentioned as to when the said notice was issued by the Presiding Officer. Thus, the

Presiding Officer had violated and acted in breach of the requirements of Rule 4 of the Election Rules and the Additional Collector rightly relied upon a decision of this Court in the case of Murlidhar Bhaiyaji Kapgate and ors. vs. Krishna Jairamji Meshram and ors. (1991 Mh.L.J 897). This finding of fact based on the record has been confirmed by the Divisional Commissioner. As the election petition succeeded on the first point itself, the second issue was not considered by the Additional Collector and the election petition was allowed on the first point itself, namely, the election was held in breach of the requirements of Rule 4 of the Election Rules. This issue has not been contested by the learned counsel for the petitioner.

6. The petitioner's main contention was that the election petition was not filed in time i.e. within 15 days from the date of election and the Additional Collector ought to have dismissed the election petition on that ground itself. In support of these contentions the learned counsel for the petitioner has relied upon the following three decisions:-

(a) Prakash H. Jain vs. Ms. Marie Fernandes (AIR 2003 SC 4591).

(b) Nasiruddin and ors. vs. Sita Ram Agarwal [(2003) 2 SCC 577]

(c) Haryana Urban Development Authority vs. B.K. Sood [(2006) 1 SCC 164].

. Section 33(5) of the Act reads as under:-

33. Procedure for election of Sarpanch and Upa-Sarpanch.-

(1) .....

(2) .....

(3) .....

(4) .....

(5) In the event of a dispute arising as to the validity of the election of a Sarpanch or Upa-Sarpanch under sub-section (1), the officer presiding over such meeting or any member may, within fifteen days from the date of the election, refer the dispute to the Collector for decision. An appeal against the decision of the Collector may, within fifteen

days from the date of such decision, be filed before the Commissioner, whose decision shall be final. The Collector or Commissioner shall give his decision as far as possible within sixty days of the receipt of the reference, or as the case may be, appeal.

. The election petition may be, therefore, moved within a period of 15 days and similar is the provision under Section 71 of the Hyderabad Municipal Corporation Act, 1956, which reads as under:-

"Section 71 - Election Petition -

election held under this Act shall be called in question except by an election petition which shall be presented in such manner as may be prescribed.

(2) An election petition calling in question any election may be presented on one or more of the grounds specified in Cls. (i) and (ii) of Sections 79 and 80 to the Election Tribunal

by any candidate at such election or any voter, within two months from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and the dates of the election are different is the latter of those two dates.

. In the case of Shaik Saidulu alias Saida vs. Chukka Yesu Ratnam and ors. **(AIR 2002 SC 749)**, the Supreme Court held that even though the period of limitation for challenging the election petition under the Hyderabad Municipal Corporation Act is provided vide sub-section (2) of Section 71, yet the section of the chapter in which it appears, does not stipulate as to the applicability or non-applicability of the provisions of the Limitation Act. It was further observed that Section 671, appearing in the Part of Miscellaneous Provisions under the said Act, provides that in computing the period of limitation, fixed for an appeal or application, referred to in the Act, the provisions of Sections 5, 12 and 13 of the Limitation Act shall, so far as may be, apply. Subsection (2) of

Section 671 provides that when no time is fixed by the Act for the presentation of an appeal or application such appeal or application shall be presented within 30 days from the date of order in respect of or against which the appeal or application is presented. This decision in the case of Shaik Saidulu Saida (Supra) has been relied upon by the learned counsel for the petitioner.

7. In the case of State of Goa vs. Western Builders **(JT 2006 (6) SC 125)** a similar issue has been considered by the Apex Court while considering the provisions of Section 34 of the Arbitration and Conciliation Act 1996. Subsection 3 of Section 34 of the said Act reads as under:-

> 34. Application for setting aside arbitral award -
>
> (1) .....
>
> (2) .....
>
> (3) An application for setting aside may not be made after three months have elapsed from

> the date on which the party making that application had received the arbitral award or, a request had been made under Section 33 from the date on which that request had been disposed of by the arbitral tribunal.
>
> Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

. Their Lordships held that the scheme of Subsection (3) of Section 34 is in two parts, namely,

> (a) an application for setting aside the award may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award and

> (b) if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

Thus, the proviso permitted condonation of delay for a period of 30 days beyond the period of initial three months to file an application for setting aside an award passed under that Act and, therefore, the provisions of Section 5 of the Limitation Act, 1963 were not applicable.

8. In the instant case, Section 33(5) of the Bombay Village Panchayat Act, 1958 states that an election dispute may be filed within a period of 15 days from the date of election. But there is no provision extending this period for 30 days nor does the said section states that the election petition filed beyond the period of 15 days shall not be entertained. By following the law laid down in the case of M/s. Western Builders (Supra), it will have to be held that the provisions of Section 5 of the

Limitation Act are applicable in the instant case. Even otherwise Section 12 of the Limitation Act clearly states that the period for making available the certified true copy of the order has to be excluded for counting the period of limitation. For all these reasons it is clear that the election dispute filed by the respondent no.1 was not beyond limitation and it was rightly entertained by the Additional Collector. The concurrent view taken by both the parties below on the issue of limitation does not call for any interference and challenge to the same is devoid of merits.

9. Hence, the petition fails at the threshold and the same is hereby rejected summarily.

(B.H. Marlapalle,J.)